THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7058 OF 2006

DATED: 10-04-2006

BETWEEN

Smt. Asia Begum,
W/o. Syed Iqbal,
Occ: Mutawallia of Ashoorkhana
Raheem Shah,
R/o. 15-1-61/C,
Siddiamber Bazar,
Hyderabad.

...PETITIONER

AND

The Government of Andhra Pradesh,
Rep. by its Secretary,
Municipal Development and Urban
Development Authority, Secretariat,
Hyderabad and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action fo th third respondent in demolishing the petitioner's property situated at MCH bearing No.15-1-621/C in pursuant of notice in Lr.No.1/TPS/C2/MCH/2006 dated 16.03.2006 as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioner submits that the petitioner has been appointed as Muthawallia of the subject Wakf institution vide proceedings dated 07.04.1998 and since then she has been discharging duties of the

Muthawallia which is popularly known as Ashoorkhana Raheen Shah and its attached properties. The subject institution is having a shopping complex consisting of cellar, ground, first and second floors which was constructed in accordance with the no objection certificate issued by the Wakf Board and also permission granted by the municipal corporation in accordance with the rules and regulations of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') and she has been paying property tax regularly to the respondents.

While so, the respondent without issuing any show cause notice, issued a notice in Letter No. 1/TPS/C2/MCH/2006 dated 16.03.2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioners have made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act.

But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case, the impugned notice in Letter No. 1/TPS/C2/MCH/2006 dated 16-03-2006 is directed to be treated as a show cause notice only permitting the petitioner to file an explanation/representation within one week from the date of receipt of a copy of this order and on such an explanation being filed and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents are directed not to demolish the premises of the petitioner.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

April 10, 2006
DSK